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March 2, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

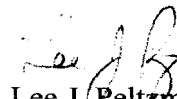
Ms. Magalie Salas
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - **TW-A325**
445 - 12th Street, S.W.
Washington, DC 20554

Re: MM Docket No. 00-5
RM-9752
Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
Las Vegas and Pecos, New Mexico

Dear Ms. Salas:

Transmitted herewith, on behalf of BK Radio, petitioner in the above-referenced rule making proceeding, is an original and four (4) copies of its Comments in MM Docket No. 00-5. Please contact the undersigned in the event the Commission has any questions with respect to these Comments.

Sincerely,


Lee J. Peltzman
Counsel for
BK RADIO

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List ABCDE

Enclosure

ORIGINAL

Before The
FEDERAL COMMUNICATIONS Commission
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 00-5
Table of Allotments)	RM-9752
FM Broadcast Stations)	
Las Vegas and Pecos, New Mexico)	

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS

BK RADIO ("BK"), by its attorney, and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby respectfully files its Comments in the above-captioned rule making proceeding.¹

1. By Notice of Proposed Rule Making, DA 00-65, released January 14, 2000 ("NPRM"),² the Commission proposed the amendment of its FM Table of Allotments to substitute Channel 268C3 for Channel 268A at Las Vegas, New Mexico and allot Channel 268C3 to Pecos, New Mexico as that community's first local aural service and the modification of BK's construction permit (BPH-96829MH) to specify Pecos as its community of license.

2. BK supports the substitution of Channel 268C3 for Channel 268A and the allotment of Channel 268C3 to the community of Pecos pursuant to Section 1.420(i) of the

¹ BK incorporates by reference its earlier-filed Petition for Rule Making in this proceeding.

² A copy of the Commission NPRM is attached hereto.

Commission's rules. As the Commission noted in its NPRM, Channel 268C3 may be allotted to Pecos in compliance with the Commission's minimum distance separation rules with a site restriction of 9.1 kilometers east to accommodate BK's desired transmitter site. The Commission noted that its own engineering study demonstrated that not only was Pecos not located within any Urbanized Area, but that the proposed operation would not encompass 50% or more of any Urbanized Area. Thus, the proposal does not represent the removal of service from a rural area to an urbanized one.

3. Moreover, the allotment of Channel 268C3 to Pecos would enable BK to provide service to an additional 70,316 people within a 3,275 square kilometer area. The change of community would result in a loss of service to only 845 people and would not result in the creation of any underserved area as the entire loss population will continue to receive at least five aural services. Thus, adoption of BK's proposal will result in a total net gain of 69,371 people. See Attachment.

4. Additionally, the proposal does not represent the removal of an "existing service" which the public has come to rely upon since the Station is unbuilt and, thus, is not on the air. See, Douglas, Tifton and Unionville, Georgia, 10 FCC Rcd 7706 (1995); Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112 (1995); Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993).

5. The proposed substitution of Channel 268C3 for Channel 268A at Lordsburg, its reallocation to Pecos and the modification of BK's outstanding construction permit to specify operation on the higher class channel with Pecos as its community of license would result in a preferential arrangement of allotments under the FCC's FM allotment priorities. It would provide Pecos with its first local aural service and enable the Station to provide service to a

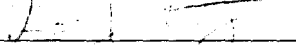
greater number of people without removing a sole local service from Las Vegas, which will continue to be served by a number of stations.³ Accordingly, there would be significant public interest benefits which would accrue from the grant of the instant NPRM.

6. In the event that the Commission substitutes Channel 268C3 for Channel 268A and reallocates the new channel to Pecos, New Mexico, BK states that it will promptly modify its Station permit, file an application for the new facilities and implement that granted application by constructing a Pecos station in an expeditious manner.

Accordingly, for the reasons stated above, BK supports the proposal contained in the Commission NPRM to substitute Channel 268C3 for Channel 268A at Las Vegas, New Mexico, and reallocate Channel 268C3 to Pecos, New Mexico as that community's first local aural service (without depriving Las Vegas of its sole local aural service) and permit BK to modify its Station permit to specify Channel 268C3 at Pecos.

Respectfully submitted,

BK RADIO

By: 
Lee J. Peltzman
Its Attorney

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March 2, 2000

³. At present, Stations KNMX(AM), KFUN(AM), KBAC(FM), KEDP(FM) and KLVF-FM are all licensed to Las Vegas, and a construction permit has been issued for Station KTLR(FM) and an application is pending for a new station which will operate on Channel 212A. Therefore, under the Commission's Revision of FCC Assignment Policies and Procedures, 90 FCC 2d 88 (1982), the reallocation of Channel 268C3 at Pecos would trigger priority three (3), while retaining the channel in Las Vegas would only trigger priority four (4).

Area and Population Analysis Proposed Channel 268 C3 for Pecos, NM

The proposal to add channel 268 C3 to Pecos, NM was analyzed for gain and loss of both population and area that would occur with acceptance of this proposal. All FM stations examined in this study were modeled at full facilities for their class, except class "C" stations which were modeled at their licensed power and HAAT. Circles were drawn around each FM station with a radius equal to the 60 dbu class distance for each station. All AM stations were modeled by their city grade contours as shown by BIA.

The penetration, expressed as a percentage of each county's land area, was applied to the total population of the county to determine how many persons theoretically would gain or loose service by this proposal. To prevent anomalous results, high density population centers such as identifiable communities were included or excluded from county population totals prior to performing calculations as appropriate.

It was determined that the proposal would cause a loss of coverage to 845 people in 952 sq. km. All of these persons would continue to receive 5 (five) or more aural services.

The gain associated with this proposal would be 70316 people in an area of 3275 sq. km. Of the people in this area 70271 currently receive 5 (five) or more aural services. The other 45 people currently receive 4 (four) aural services, and would receive a fifth service if this proposal is approved.

My qualifications are a matter of record with the Commission. The information contained in this analysis is true and correct to the best of my knowledge.

James S. Bumpous
PG-9-12478

A handwritten signature in black ink, reading "James S. Bumpous". The signature is fluid and cursive, with the first name "James" and last name "Bumpous" clearly legible.

Technical Consultant

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-5
Table of Allotments,)	RM-9752
FM Broadcast Stations.)	
(Las Vegas and Pecos, New Mexico))	

NOTICE OF PROPOSED RULE MAKING

Adopted: January 5, 2000

Released: January 14, 2000

Comment Date: March 6, 2000

Reply Comment Date: March 21, 2000

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed BK Radio ("petitioner") proposing the substitution of Channel 268C3 for Channel 268A at Las Vegas, New Mexico, the reallocation of Channel 268C3 to Pecos, New Mexico, as the community's first local aural service, and the modification of its construction permit to specify operation on the higher class channel and Pecos as its community of license.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Pecos, with a 1990 U.S. Census population of 1,012 persons, has its own local government composed of a mayor, councilmen and municipal court as well as its own post office and separate zip code. In addition, Pecos maintains its own police and fire departments, district attorney and K-12 school system, the Pecos Independent School System. Pecos, according to the petitioner, is also home to numerous commercial establishments, including restaurants, grocery stores, jewelers, a laundromat, motels, video rental and auto repair. Further, Pecos has a Public Health Clinic, Mental Health Center, the E E Fogelson Visitor Center and several churches. Las Vegas, with a population of 14,753 people, presently receives local aural service from AM Stations KNMX and KFUN, noncommercial educational FM Station KEDP, Channel 216A, and commercial FM Stations KBAC, Channel 251C, and KLVF-FM, Channel 264C3. In addition, a construction permit has been issued to Station KTRL, Channel 275A and to Sangre de Cristo Broadcasting Co. on Channel 244A, and an application is pending from Abundant Life Broadcasting on Channel 212A. Therefore, petitioner contends that the allotment of Channel 268C3 at Pecos, as the community's first local aural service,

is to preferred over a fifth or sixth such service at Las Vegas, citing Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).¹

3. Petitioner states that Pecos is not located within any Urbanized Area and the proposed operation will not provide a 70 dBu service to 50% or more of any Urbanized Area. However, the upgrading of the station to a Class C3, as a Pecos station, will enable it to provide service to 29,198 persons within a 4,771 square kilometer area, which represents an increase of almost 9,000 persons over its presently authorized facilities. Finally, petitioner points out that its request does not represent the removal of an "existing service" which the public has come to rely upon since the station has not yet been licensed to operate.

4. Channel 268C3 can be allotted to Pecos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.7 miles) east to accommodate petitioner's desired transmitter site.²

4. Based on the above information, we believe the public interest would be served by proposing the substitution of Channel 268C3 for Channel 268A at Las Vegas, its reallocation to Pecos, and the modification of petitioner's outstanding construction permit to specify operation on the higher class channel and Pecos as its community of license since it could provide Pecos with its first local aural service and also enable the station to increase its potential service area. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 268C3 at Pecos. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Las Vegas, New Mexico	244A, 251C, 264C3, 268A, 275A ³	244A, 251C, 264C3, 275A
Pecos, New Mexico	--	268C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by

¹ The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Priorities (2) and (3) are given co-equal weight.

² The coordinates for Channel 268C3 at Pecos are 35-32-54 North Latitude and 105-35-18 West Longitude.

³ Channels 268A and 275A were allotted to Las Vegas pursuant to the Report and Order, MM Docket 98-49, 13 FCC Rcd 20182 (1998).

reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 6, 2000, and reply comments on or before March 21, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Lee J. Peltzman
Shainis & Peltzman, Chartered
1901 L Street, N.W.
Suite 290
Washington, D.C. 20036
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be

considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs,

or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.

CERTIFICATE OF SERVICE

I, Michael S. Goldstein, secretary at the law firm of Shainis & Peltzman, Chartered, do hereby certify that on this 2nd day of March, 2000, I sent via hand-delivery a copy of the foregoing to the following persons:

Leslie Shapiro
Federal Communications Commission
445 -12th Street, S.W., **Room 3-A501**
Washington, DC 20554



Michael S. Goldstein